Supreme Court, U.S.
FILED
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No.

In the
Supreme Court of The United States

Irwin Gary Roberts,
Petitioner
v.
Patricia Jeanne Ard,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THIS STATE OF ARIZONA

PETITION FOR A WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

1. The Petitioner within a five month period filed two Motions which can be found in Appendix 1 Exhibits E and F in the Justice Court to advise the Petitioner who the Witnesses were going to be, what evidence they had and what their legal theories were. Petitioner's Motions were denied.

   Did Judge Anderson abuse his discretion in not compelling the Respondent to produce the Disclosure Statement to the Petitioner? If the answer is yes, is the Petitioner entitled to a new trial in the State Courts of Arizona?

2. The Respondent deliberately failed to comply with the disclosure rules for six months, in fact they never complied, and the Petitioners was seriously prejudiced in his defense to the Summary Judgment granted against the Petitioner.

   Is the Petitioner entitled to a new trial in the State Courts of Arizona because the Respondent never produced the Disclosure and prejudiced the Petitioner?

3. Please refer to the Summary Judgment transcript in Appendix Q Exhibit A page 15 line 18-19 where Defense Counsel, Covell, said in open court "The purpose of delaying in the first place so we could file our Motion for Summary Judgment", this proves

that the disclosure statement was deliberately not given to the Petitioner.

> Based on Ms. Covell's admission that she deliberately did not file the Disclosure Statement, is the Petitioner entitled to a new trial in the State Courts in Arizona, as she deliberately did not give the Petitioner the Disclosure Statements?

In conclusion of the above issues of the Disclosure statement the Petitioner was not given an opportunity to a fair hearing in the trial court by the Overt Acts of Ms. Covell deliberately not producing the Disclosure Statements violating Petitioner's equal protection and due process of law and also violated Petitioner's Civil Rights under the Constitution.

4. This case also presents other issues of equal protection and due process. A party who is represented by an attorney is not sanctioned for willfully failing to follow the Rules of Civil Procedure for over six months by failing to file a Disclosure Statement, yet a party not represented by a lawyer who made a good faith effort to follow the rules is given the ultimate sanction by being denied the fundamental right to have this case heard on the merits because he was a mere thirty days late following a confusing rule that he did not willfully fail to follow that and that did not prejudice the adverse party on the merits and such action should generally result upon showing prejudice to an adverse party: absent such prejudice, society's interest in adjudicating appeal on the merits should

govern there was no showing of prejudice by the adverse party.

Was the Petitioner's Civil Rights violated under the 14th Amendment to the Constitution by the State Courts in Arizona who violated Petitioner's equal rights and due process by treating lawyers differently than a Pro Se Litigant? The Petitioner states the Overt Acts of the State Judges in Arizona violated Plaintiff's Constitutional Rights. If yes, is Petitioner entitled to a new trial in Arizona?

5) By changing the style of the case "Irwin Gary Roberts dba Accident Assistance Centers of Arizona, Inc., they made the Petitioner personally responsible and the Petitioner's Corporation personally responsible.

As the Respondents committed fraud on the Court, with the changing of the style of the case, if the answer is yes, is the Petitioner entitled to a new trial?

6) The Respondent reported the Petitioner to various agencies stating he was an Attorney. The Arizona State Department of Insurance stated the Petitioner is a public adjuster and he is allowed to settle first and third party claims.

As the Respondent committed fraud on the Court regarding the above statement, if the answer is yes, is the Petitioner entitled to a new trial?

7) There is no unauthorized practice of law in the state of Arizona, so an individual can settle first and third party claims, as public adjusters are allowed to settle first and third party claims, as they have a property right under their licenses and there is no case or statutory law in the State of Arizona that states that a public adjuster cannot settle first and third party claims.

The Respondent committed fraud on the Court again. If the answer is yes, is the Petitioner entitled to a new trial in the State of Arizona?

8) The Petitioner put a lien on the proceeds of the Respondent's third party claim and removed it in 9 days.

Therefore, it is proven in my pleadings that the Respondent committed fraud again. If the answer is yes, is the Petitioner entitled to a new trial in the State of Arizona?

9) Defense Counsel, Covell, stated that there is a statute in the State of Arizona that states that public adjusters cannot settle third party claims.

As there is not statute in the State of Arizona, then did Ms. Covell commit a fraud on the court? If so, is Petitioner entitled to a new trial?

10) Now, these above issues cover the Summary Judgment Motion that was granted against the Petitioner.

The Petitioner states there are three pre-requisites that must be met before the entry of Summary Judgment is appropriate; the record before the Court must show:

> That there is no genuine dispute as to material facts
> That only one inference can be drawn from those undisputed facts
> That based upon those facts, the moving party is entitled to judgment as a matter of law.

The Petitioners in these pleadings have proven to this Court that he submitted supporting affidavits from himself and from a Notary and in addition, answered all of the Respondent's acquisitions.

> Therefore, if this Court accepts that as the law, which it is, and the answer is yes, is the Petitioner entitled to a new trial in Arizona because the Summary Motion of the Respondent should not have been granted because there was an abuse of discretion by the judge, Judge Anderson?

11) Next the Petitioner references Exhibit I in Appendix 1 where the Petitioner requests the Summary Judgment hearing should be continued at a later date. Petitioner cites 19 Arizona APP 574 James Wesley Young v. Douglas L. Peacock May 3, 1973. The Appeals Court held that the Trial Court abused this discretion on the Petitioner's Motion for Summary Judgment where the hearing was premature. The Petitioner's Civil Rights were

violated according to the 14th Amendment because his due process was violated and he could not have a fair hearing because he didn't have the Disclosure Statements that were deliberately not given to him by the Overt Acts of the Respondents.

12. If this Court finds that Judge Anderson abused his discretion in not granting continuance, because the Summary Judgment hearing was premature, and the Petitioner was not given the Disclosure Statements, if the answer is yes, is the Petitioner entitled to a new trial in Arizona?

Does every element of fraud in Petitioner's Writ of Certiorari to the Supreme Court of the United States disclosed by the scheme by the Officers of the Court, Covell and Brnilovich, demands historical power of equity to set aside fraudulent, begotten judgments? If the answer is yes, is the Petitioner entitled to a new trial in the State of Arizona?

13. Whether the Justice Court, erred in denying Petitioner's Motion for relief under Rule 60A and 60C of the Arizona Rules of Civil Procedure.

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JURISDICTION

28 U.S.C. §1257 (a)

The Arizona Supreme Court filed this decision on May 15, 2003 the Court has jurisdiction under USC 1257a to review a decision of a States highest court to consider whether a State Statue is repugnant to a State Constitution, or where any right privilege or immunity is set up or claimed under the Constitution.

STATUTORY AND CONSTITUTION PROVISIONS INVOLVED

AMENDMENT XIV, UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

USC 42 §1983

§ 1983. Civil Action for Deprivation of Rights
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the depreciation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

USC 42 § 1985

§ 1985. Conspiracy to Interfere With Civil Rights. Obstructing justice; intimidating party, witness, or juror If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due Courts of Justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws.

Title 28 # 1343

The jurisdiction in this case also arises under Title 28 #1343 in that the District Court shall have jurisdiction of any civil action by law to be commenced by any person. The District Court will have original jurisdiction.

EDITOR'S NOTE

ORIGINAL PAGINATION IS NOT CONTINUOUS.

STATEMENT OF FACTS

The Petitioner was President and CEO of a multi million dollar shirt business in Clover, South Carolina in the late 60's and 70's, where 10,000 dozen shirts were stolen out of the warehouse in a white collar fraud.

After this event the Petitioner decided to go back to school where as he left Brooklyn
Law School twenty years earlier as a student in good standing after 2 years as Petitioner's father became ill and Petitioner had to help in the family business.

Petitioner clerked for a law firm in New York for two years while attending Long Island University in the evening taking two Masters Degrees Programs, one in Political Science and one in the Social Sciences with an Interdisciplinary Study at the United Nations.

The Petitioner was a single parent and took his son Seth Roberts out West to get him well, as he was suffering from asthma and within a short time Seth became well and the Petitioner became a public adjuster in Arizona.

The Petitioner Pro-Se brought an action in the Federal Courts in Charlotte, North Carolina pertaining to the white collar fraud and won hands down.

The Petitioner has been negotiating and settling 1st and 3rd party claims in automobile accidents for over 10 years in the State of Arizona under his public adjuster's licenses 28761 and under his Corporate licenses Accident Assistance Centers of Arizona, Inc. 28762. These two licenses were issued by the Arizona State Department of

Insurance based on the Petitioner's legal education and the fact Petitioner clerked for a law firm.

The Petitioner pays fees for the privilege of using his property right and his licenses 28761 and 28762 are in good standing.

The Respondent Ard is not coming into this Supreme Court of the United States with clean hands, as the Petitioner received a phone call from the Department of Welfare about three weeks ago, that the Respondent Ard did not report the $10,000 she received from this automobile accident representing herself in the case herein, as well as the other monies she received from two other automobile accidents representing herself..

The Respondent Ard did not report the $2,006 she received from the case herein to the Bankruptcy Court, where she was in recently, as well as other monies she received from other automobile accidents representing herself.

Patricia Ard, the Respondent was in an automobile accident and her vehicle was crashed into by a drunk driver. The Respondent, Ard and retained the Petitioner to find this driver so she could file a claim for her underinsured motorist coverage, which she stated was in effect in her policy. See Exhibit 11 and 12 in Appendix D. Petitioner filed a first party claim for the Respondent immediately because at that time Petitioner did not find the third party that crashed into her vehicle.

The Petitioner after a 16 ½ hour search helped the Respondent, as she now had a 3rd party claim as he found the drunk driver, however, she misrepresented an important fact to the Petitioner, the Respondent never had uninsured motorist coverage. Petitioner would not have taken her on

as client without upfront monies as the investigation had to take place one and a half hours from his office out in the boondocks.

The Petitioner informed the Respondent the charges for investigation would be $2,006 for finding the third party and that the Respondent could pay him from the proceeds from USAA the insurance carrier third party claim.

The Respondent Ard threatened the Petitioner by telling him she was going to report him to every agency in Phoenix, that the Petitioner told her he was an attorney and get the Petitioner into big trouble. The Respondent kept her word and reported the Petitioner to the Arizona State Bar, the Arizona State Department of Insurance, the Better Business Bureau and the Attorney General's office. The Petitioner was exonerated by all these agencies. When the Respondent Ard signed the contract with the Petitioner's Corporation, the Petitioner told her in the presence of a notary that he was a public adjuster and not an attorney which can be referred to in Michael Wilenchick's Appendix 1 Exhibit D Affidavit, which is notarized, stating that Roberts explained the terms of the contract to Patricia Ard and told her he was a licensed public adjuster and that he settled personal injury claims, and he was not licensed to practice law in the State of Arizona. Irwin Gary Roberts Appendix 1 Exhibit A1 Affidavit and opposition in Motion for Summary Judgment at no time did I ever tell the Respondent Ard or her father, George Klidas that I was a licensed Arizona attorney and the Petitioner told the Respondent Ard and Mr. Klidas that he was licensed as a public adjuster to settle personal injury claims in Arizona, that Petitioner did not slander Respondent Ard as truth is a defense, that Petitioner filed a lien for investigating to determine if there was 3rd party coverage, and that the lien was against the proceed of any money she would collect

from the insurance company, as she authorized me to do in the signed contract, the lien was not a lien against the real property.

The Petitioner in an effort not to forego his fee that Accident Assistance Center of Arizona, Inc. was entitled to under the contract to what the Petitioner did contractually, the Respondent agreed to pay the Petitioner for his investigation, which was legal according to ARS 20-321. The Petitioner individually sued the Respondent Ard in the Superior Justice Court for $9,999.00 and Accident Assistance Centers of Arizona, Inc. sued her on the contract in the Peoria Small Claims Court for $2,006 for the first party investigation, to find the third party. There were two separate cases with two separate Petitioners, one Petitioner Irwin Gary Roberts was in the justice court for $9,999.00 and the Petitioner's Corporation Accident Assistance Centers of Arizona Inc. was in the small claims court for $2,006. There was one common Respondent in the Small Claims Court Ard and one common Respondent in the Justice Court Patricia Ard.

The Respondent, Ard arranged with Jennings, Strouss & Salmon of Phoenix, Arizona to represent her Pro Bono. At this point in time, the attorney David Brnilovich, attorney and Rebecca Covell, attorney who work for Jennings, Strouss and Salmon moved to consolidate both cases. In an effort to speed this matter along, both Accident Assistance Centers of Arizona, Inc. one Petitioner and Irwin Gary Roberts the other Petitioner decided to consolidate. It was at this time the Defense team of Brnilovich and Covell deliberately changed the style of this case without any valid or legal reason, which mislead the court into believing there was one Petitioner and because of the value of the two separate claims exceeded $10,000. The court had no longer jurisdiction of this case as the Respondent did this by

changing the style of this case "Irwin Gary Roberts DBA Accident Assistance Centers of Arizona". The misstatement of the correct heading was repeatedly brought to the attention of Brnilovich and Covell and the courts, but they continued to perpetrate fraud on the court and on the Petitioner. See Appendix 1 Exhibit SOA Department of State that was conducted on June 6, 2002, that no trade name record was found to be registered under the name Irwin Gary Roberts. There can only be one reasonable conclusion this was done in bad faith and subject to Rule 11 Sanctions, which was denied by the Justice Court.

The Petitioner dropped the $9,999.00 defamation suit in the Justice Court so that the case would remain in Justice Court as the monies now would not exceed the jurisdictional limit.

The Petitioner refers to the transcript of June 20, 2002 and will explain several of the issues in the transcript and in the conclusion of the transcript will explain the chronological order what happened from the Justice Court to the Supreme Court of Arizona.

The Petitioner refers to the transcript of June 20, 2002 Appendix Q Exhibit A before Judge Lex Anderson CIV01-02671RA refer to page 15 line 22-25 page 16 line 1-4 where it states we also did not mislead the court as to the name of the Petitioner's business or his trade name or anything like that. We were just consolidating two cases together. One was the Petitioner himself against the Defendant and the other one was his business against the Defendant. Thus in this instance, Ms. Covell, an Officer of the court, committed fraud as the Petitioner attached Appendix Q Exhibits R, X, W, Z are attached to show how Defense Attorneys Brnilovich and Covell manipulated the court to

make the Petitioner and his corporation personally responsible by changing the style of this case "Irwin Gary Roberts DBA Accident Assistance Centers of Arizona, Inc." and by changing the style of the case, they made the Petitioner personally responsible and the Petitioner's Corporation personally responsible. Therefore, in a statement in open court she committed fraud as an Officer of the court she knowingly, willfully and willingly gave false testimony concerning material matters given with the willful intent to provide false testimony and not on account of confusion, mistake or faulty memory and therefore, violated Petitioner's Civil Rights in getting a fair hearing at the Summary Judgment trial.

Refer to transcript page 21 line 1-4 Appendix Q Exhibit A Ms. Covell states, when she found out that he was not authorized to settle third party claims, she fired him immediately, and she notified the Bar and the Department of Insurance that he had been engaging in this type of practice. The Defendant Ard reported the Petitioner to the Bar Association and the Arizona State Department of Insurance for being an Attorney. Ms. Covell lied to the court again because Petitioner had an affidavit from a notary Michael Wilenchich and one from himself stating that he never told anybody that he was an attorney but a public adjuster. Ms. Covell, an Officer of the court committed fraud on the court and she abused the process and a Summary Judgment was granted against the Petitioner on consumer fraud. The Petitioner refers to Appendix Q Exhibits 3, 5, and 8 from the Arizona State Department of Insurance that states he is allowed to settle third party claims. Case Closed.

Next refer to the transcript of June 20, 2002 page 21 lines 5-12 Appendix Q Exhibit A it required the Petitioner to engage in the unauthorized practice of law to violate the terms of his license as a public adjuster, the contract could not be performed without violating applicable law, and therefore is illegal and void, meaning that it had no legal force or affect from the very beginning. Therefore, the Petitioner cannot seek fees under a contract that does not exist. Ms. Covell, an Officer of the Court, perpetrated fraud on the court, as there is no statute or case law in the State of Arizona that states he is not allowed to settle first or third party claims under ARS 20-321. In addition, the unauthorized practice of law was abolished in the State of Arizona in 1984, therefore how could the contract be Void Abinitio. Therefore, the Petitioner was legal and Ms. Covell, an Officer of the Court, committed fraud on the court again. Ms. Covell, an Officer of the Court, violated the Petitioner's Civil Rights and abused the legal process by committing fraud on the court.

Next refer to transcript of June 20, 2002 page 23 lines 15-20 Appendix Q Exhibit A this shows contempt for the prior court proceedings and warrants Rule 11 Sanctions. The Defendant's final counterclaim pertains to the invalid lien statute, A.R.S. 33-420. Although Petitioner has denominated basically a contract line, we believe it operates to cloud title to Defendant's real property, then why would he file and why would he record this lien at the County Recorder's office, the place where liens on real property are records. Petitioner – the Defendant wrote a letter to the Petitioner on

November 7th requesting that the Petitioner remove this lien. He had not removed it within 20 days. Then only after we had appeared in this case did he remove this lien. Therefore, the Petitioner is entitled – Defendant is entitled to damages under the statute. Petitioner proves in Appendix A and Appendix Q, Exhibit ROL and either/ or Exhibit 16 that the lien was timely removed in 9 days. Ms. Covell, and Officer of the Court, committed fraud on the court and abused the legal process and Summary Judgment was granted against Petitioner because of her fraud.

Next refer to transcript of June 20, 2002 page 19 line 9-14 Appendix Q Exhibit A the Defendant Covell said in open court during the Summary Judgment hearing we know, however, that under the Arizona statute relating to public adjusters, that the Petitioner is not authorized to settle third party claims. We also know from the Utah case, and the Arizona cases that I cited my motion and reply that third party representation by a public adjuster is considered unauthorized practice of law. Ms. Covell as an Officer of the Court committed fraud on the court, as there is no Arizona statute that stated the Petitioner is not authorized to settle third party claims. There is also no appellate ruling in Arizona and the Supreme Court in Arizona has not ruled that a public adjuster cannot third party claims. Ms. Covell mentioned the Utah case, which lead the court to believe that that is the law in Arizona and it is not, it is the law in Utah.

The Petitioner has concluded his issues referred in the transcript of June 20, 2003 and what happened next in the Peoria Justice Court in Peoria, Arizona, Judge Anderson,

who never went to law school, granted the Respondent Ard's Motion for Summary Judgment on all 5 counts and the Petitioner and his Corporation Accident Assistance Centers of Arizona, Inc. both became liable, as the Judgment for $17,000 was entered in favor of the Respondents against the Petitioners.

Next the Petitioner brought an appeal to the Superior Court Maricopa County, the special action to the Court of Appeals, and a Petition for review to the Supreme Court of Arizona, all appeals were denied, discretionary, no legal opinion was ever given and every Motion, Response, Reply from small Claims Court to the Supreme Court of Arizona of the Petitioners was denied and all the Motions of the Respondent were granted. The Superior Court, the Court of Appeals and the Supreme Court of Arizona clearly had jurisdiction to hear this appeal, as the real party and interest was unable to show any prejudice because of a technical error because of a complicated rule or Petitioner's failure to file his appellate memorandum within 30 days. Petitioner made a good faith effort to follow the rules of Appellate procedure in Civil Appeals. Since the inception of this case, it was the Petitioner's first technical error made while filing a Motion that was not timely. As neither of the two conditions that must be shown under Arizona case law was present, all the state courts clearly had jurisdiction to hear the appeal and the real party and interest was unable to show any prejudice by Petitioner's failure to timely file his appellate memorandum and to accept the mere technical error and to accept jurisdiction. Therefore, Hill v. City of Phoenix 193 Arizona 299 (1999) which was ruled on by the Supreme Court State of Arizona is the law in the State of Arizona and the Petitioner asked the Supreme Court of Arizona to take judicial notice of it, as the Petitioner shepardized the Hill case and it is the law in the State of Arizona. Therefore, the state courts and the judges in the

state courts violated the Petitioner's Civil Rights according to the Constitution of the United States, as his case should have been heard on the merits as they abused their discretions.

The bottom line in this action is that Rebecca Covell, David Brnilovich, and the firm of Jennings, Strouss & Salmon in Phoenix, Arizona, have perpetrated a fraud on the Court, which could be found in the following: Appendix Q Exhibit A in the June 20, 2002 transcript page 15 lines 22-25, page 16 lines 1-4, page 21 lines 5-12, page 23 lines 15-20 and page 19 lines 9-14.

The Petitioner also references page 15 line 18-21 where Rebecca Covell says "the purpose of delaying in the first place so we could file our Motion for Summary Judgment, once we found out where the case was going to land, we went ahead with the Motion for Summary Judgment and we filed it." The Petitioner states that Respondent Counsel acted in bad faith and when he brought his Motions on December 10, 2001 Exhibit E in Appendix 1 and on May 8, 2002 Exhibit F in Appendix 1 for Motion for Entry of Judgment to dismiss counterclaim and to prohibit the use of witnesses and evidence by the Respondent, the Justice Court at that time should have dismissed their cause because they acted in bad faith. The Petitioner's Civil Rights were violated according to the 14th Amendment because his Due Process was violated and he could not have a fair hearing because he didn't have the Disclosure Statements that were deliberately not given to him by the Overt Acts of the Respondent.

> The Petitioner states in Appendix 1 Exhibit C that Petitioner's Motion for Reconsideration explains to the court the legal reasoning citing case law and the court deliberately and willfully ignored the undisputed law of the

State of Arizona, that judges are duty bound to follow. The Petitioner states on this issue that his 14th Amendment Rights to the Constitution of the United States were violated and his due process of law was taken away from him by the Overt Acts of Judge Anderson ignoring the law of the State of Arizona that he is duty bound to follow violated the Petitioner's Constitutional Rights. The Petitioner calls to the attention of this Court that Judge Anderson never went to law school so the Petitioner explained the law to Judge Anderson to no avail.

Next Petitioner refers to Exhibit G in Appendix 1, where the Petitioner brought a Rule 11 Sanction against the Respondent and the Attorneys and requested the Court to send a clear message to the Respondent and her Counsel that this kind of unethical conduct will not be tolerated by this court and the appropriate sanctions and significant fines should be reimbursed to the Petitioner of all the time and expenses attributed to this misconduct and the striking of Respondent's pleadings.

Next the Petitioner references Exhibit I in Appendix 1 where the Petitioner requests the Summary Judgment hearing should be continued at a later date. Petitioner cites 19 Arizona APP 574 James Wesley Young v. Douglas L. Peacock May 3, 1973. The Appeals Court held that the Trial Court abused this discretion on the Petitioner's Motion for Summary Judgment, where the hearing was premature. The Petitioner's Civil Rights were violated according to the 14th Amendment because his due process was violated and he could not have a fair hearing because he didn't have the Disclosure Statements that were deliberately not given to him by the Overt Acts of the Respondents. Cury v. Brown 440 F2D 259, 261, 262 1971. It is an abuse of discretion for not granting a continuance to a Pro Se Litigant.

The Petitioners refers to Exhibit ROL and Exhibit 1 in Appendix 1 where he removed the lien in 9 days where Rebecca Covell said on page 23 line 17-19 in the transcript "he had not removed it within 20 days", therefore, Rebecca Covell committed fraud on the Court, but a Motion of Summary Judgment was granted against the Petitioner again, thus violating the Petitioner's Civil Rights under the 14th Amendment of the Constitution of the United States as his equal protection and due process was violated by the Overt Acts of Rebecca Covell.

Petitioner refers to Appendix Q Exhibit R and X where Defense Counsel deliberately changed the style of the case and then in Exhibit W she changes the style of the case to correct heading. The Court can clearly see the fraud committed by Defense Counsel in this issues and Petitioner's Civil Rights were violated again as according to the 14th Amendment of the Constitution his property rights were violated as only Petitioner's Corporation should be responsible for the judgment against him. The Petitioner submits Appendix 1 Exhibit SOA from the State of Arizona, Department of State, done on the 6th day of June 2002, that Petitioner does not have a trade name, thus the Respondent committed fraud on the Petitioner changing the style of the case, so the Petitioner should not be liable personally and on his corporation, which should have never happened, as only his corporation should have been responsible. Exhibit SOA was hand delivered to Judge Anderson in the Summary Judgment hearing which is evidence that Irwin Gary Roberts was not doing business as Accident Assistance Center of Arizona, Inc.

Next Petitioner refers to Exhibits 3, 5, and 8 in Appendix Q, which refers to the Arizona State Department of Insurance closes the case against Petitioner and states Petitioner is

allowed to settle 3rd party claims thus, in the Summary Judgment transcript, Rebecca Covell committed fraud again. Next the petitions motioned the Peoria Justice Court for Rule 60 A, 60 C motion which was denied by the Justice Court.

I. REASON'S FOR GRANTING THE PETITIONS

The Arizona Supreme Court has decided important Federal questions that have not been, but should be settled by this court and has decided that question in a way that is inconsistent with other decisions of the Court.

The Petitioner cites the Norwest Bank "Minnesota" NA v. Symington 197 Arizona page 181, P3PD 1101 (App 2000). Relevance for Disclosure and Discovery purposes is quite broad, is not limited to evidence that is admissible at trial, but it includes information that may be useful because it could reasonable lead to admissible evidence. All that is required is to trigger a duty to disclose under Rule 26.1 (a) 4029 is a determination that a person "may" have relevant knowledge of a document "may" have knowledge of content. The Petitioner cites Rosier v. Ford Motor Company 573 F2D at 1339 the aim of Rule 60c (3) is to invalidate judgments which have been unfairly obtained. The Court of Appeals review of the denial of its Motion for Relief of Judgment under an abusive discretion of standard, and the Court considers it an Abuse of Discretion. For a trial court to act arbitrarily or make a decisions unsupported by fact or law, 16 ARS, Rules of Civil Procedure, Rule 26, 60c3.

The Petitioner's Civil Rights were violated according to the 14th Amendment because his due process was violated and he could not have a fair hearing because he didn't have the Disclosure Statements that were deliberately not given to him by the Overt Acts of the Respondents.
The leading case dealing with fraud on the Court in the United States v. Hazel Atlas Glass Company v. Hartford Empire Company.
1944 U.S. 328, 64 S. Ct. 997 88 LED 1250
Where Patent Judgment of the Circuit Court of Appeals and the District Court said that it was valid and infringed and was obtained by fraud. The public interests demanded that the judgments be set aside and even if the party against whom the judgments were redress had not exercised the highest degree of intelligence in the discovery of fraud.
Every element of fraud here disclosed demands to exercise the historical power of equity to set aside fraud hereby be gotten judgments – this is not simply a case of judgment obtained with the aid of a witness who on the basis of evidence is believed to be guilty of fraud, there was a carefully executed scheme to defraud not only the Patent Office, but the Circuit Court of Appeals.

Fraud perpetrated by an Officer of the Court so that the judicial machinery cannot perform in the usual manner is impartial task of adjudicating cases that are presented for adjudication.
441 F2D 930 Tuscano v. Cir (CA9 1971)

Equitable relief against fraudulent judgments is a remedy devised by courts to alleviate hardship arising from General Court MAD Rule that judgments should not be disputed after the expiration of the term at which they are extended.

Every element of fraud in Petitioner's appeal to the Supreme Court of the United States disclosed demands that exercise of the historical power of equity to set aside fraudulently begotten judgments.
Marsall v. Holmes 141 US 589 133 S. Ct. 62, 352 LED 870

The fraud perpetrated by Rebecca Covell, David Brnilovich and the firm Jennings, Strouss & Salmon in Phoenix, Arizona on the Petitioner are shown in specific acts in Summary Judgment hearing in the transcript in Appendix D Exhibit A and the pleading in Appendix D and Appendix 1. The fraud was extrinsic and subject to the relevant rules would support a bill for review. Hazel Atlas Glass v. Hartford Empire Company 64 S. Ct. 997, 322 U.S. 238 Hazel Atlas Glass Co. Hartford Empire Co. (U.S. Pa. 1944)

Petitioner cites Curry v. Brown because the Petitioner requested the Summary Judgment hearing should be continued at a later date, 440 F2D259, 261-262 (DC CIR 1971 Percuriam): Hudson v. Hardy 412 F2D 1091, 1094 (DC 1968 Percuriam): C. Winfrey v. Brewer 570 P2D 764: Harris v. Payte 440 F2D 315, 318 (7 CIR 1971) The courts failure to grant continuance to a Pro Se Plaintiff when a Motion to Dismiss was converted to one for Summary Judgment was an abuse of discretion. We therefore reverse the judgment, and a fair opportunity to respond, may be given prior to any further consideration of the Motion.

The Petitioner has a case of action under 42 U.S.C. 1983, Title 28, 1343, and the 14th Amendment to the Constitution of the United States against the Defendant Respondent in the action and the Defense Attorneys Rebecca Covell and David Brnilovich and the firm Jennings, Strouss & Salmon as the Petitioner alleges under color of the State of Arizona in the State Courts that the action of the Respondent and Defense Counsels to deprive Petitioner of his rights secured by the Constitution of the United States because of this fraudulent conspiracy by the Defendant and her attorneys in their actions by the Overt Acts . Flagg Bros v. Brooks 436 U.S. 149, 98 S. Ct. 1729, 1733 56 LED 2 D 185, 186 (1978)
Sterling v. Village of Maywood 579 F2D 1350, 1353 No. 6 7th Cir 1978

The 14th Amendment to the Constitution of the United, to redress the deprivation under color of state law the due process and equal protection of the law by the Overt Act of the Defendant and her attorneys, by the Overt Acts of fraud on the court deprived the Petitioner of a fair hearing and the Summary Motion Judgment on all 5 counts should be overturned and dismissed.

Arizona Courts recognize the Rules of Civil Procedure and dispose of cases on the merits where there are errors procedure can be characterized as harmless and non prejudicial to mislead the other party. Hanen 102 Arz at 9, 423, P2D

Petitioner states see Appendix D Exhibit A, where it states APPELLANT'S APPEAL MEMORANDUM TO REPLACE THE PREVIOUS PLEADING CAPTIONED ERRONEOUSLY AS RESPONSE TO REPLY IN SUPPORT OF DEFENDANT'S APPLICATION FOR ATTORNEY'S FEES, IF THIS EXHIBIT A WAS

PLACED AS And (2) the Appellee can demonstrate that he was prejudiced because he was not informed on the issues on appeal. In this case, Appeal and Error 775, ON APPEAL COURTS STRIVE TO DISPOSE OF CASES ON THEIR MERITS RATHER THAN ON HARMLESS TECHINICAL ERROR. The decisions in Performance Funding is consistent with the decisions of the Arizona Supreme Court in Hill v. the city of Phoenix, 193 Ariz. 299 (1999) in which the Supreme Court held (1) That where the appellate court has general subject matter jurisdiction as well as personal jurisdiction over the parties, the court should strive to resolve an appeal on the merits; and (2) An appellant who fails to follow appellate procedure does so at the risk of losing his right to judicial review on the merit, and such sanction should generally result upon a showing of prejudice to an adverse party; absent such prejudice, society's interests in adjudicating appeals on the merits should govern.

The Petitioner respectfully requests this Supreme Court of the United States to review Appendix D Exhibit D Superior Court State of Arizona in and for the County of Maricopa case number CV 2002-017209 which is the Appellant's Motion for Reconsideration of the Court's Decision to Dismiss the Appellant's Appeal for Failure to Timely File Their Memorandum and to review the Petition for Special Action in the Court of Appeals State of Arizona Division 1 Appendix A and to review the Petition for Review to the Arizona Supreme Court State of Arizona 02-0331. The Petitioner's legal arguments and important facts are in the above documents for your review. The Petitioner hopes that this Court will accept jurisdiction of Petitioner's Writ of Certiorari.

THE PETITIONER REFERS TO THE ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT

THIRD EDITION
UNDERSTANDING LAWYERS, ETHICS, AMERICAN BAR ASSOCIATION

Advocate Rule 3.3 Candor toward the tribunal

A lawyer should not knowingly make a false statement of material facts or law to a tribunal

Offer evidence that the lawyer proves to be false.

In a statement in open court may be properly made only when the lawyer knows the assertion is true or believes it to be true on a basis of a diligent inquiry

A legal argument based on knowingly false representation of law constitutes dishonesty toward the tribunal

Mode code comparison a lawyer should not knowingly make a false statement of law or fact

There is no ethical violation more damaging to the administration of justice that the knowledgeable use by a lawyer of false testimony in the judicial process Florida Bar v Right Myer 616SO2D953, 955 Fla 1993 quoting the Florida Bar against Dodd 118 SO 2D17, 19 Fla 1960

Although a lawyer paramount duty is to pursue the clients vigorously that duty must be met in conjunction with, rather than in opposition to,

other professional obligations with, rather than an opposition to other professional obligations.
Thorton v. United States 357 A2D 429 (DC) Cert denied 429 US 1024 (1976) Thus the lawyers first duty is to the court and to the proper administration to justice
State v. Taylor 648 SO2D S01 F-A 1995
Implicate is the lawyers role as an officer of the court it is the general duty of candor
United States v Shaffer Equipment Co. 11F3D450 4th Cir 1993

The model rules require that a lawyers statement of material factor of law be truthful
See State ExRel Oklahoma Bar Association v. Johnston 863 P2D 1136 (Okla 1993) Any charge of misrepresentation to a judge or a tribunal also carries with it included or implied count of making false statements in violation of Rule 3.3a (1)
The requirement of truthfulness applies to statements made orally to the court
People v. Bertagnolli 861 P2D 717 Colorado 1993.

Paragraph 2 False evidence may not be offered knowingly

The Respondent's attorneys, David Brnilovich and Rebecca Covell are also bound by the Ethical Rules of Conduct, Rule 42 of the Supreme Court of Arizona, which states that an attorney should not knowingly make false statements of facts or law to a tribunal.

Perjury is commonly defined as the willful insertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in the judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court or in an affidavit or otherwise, such assertion being material to the issues or point of inquiry and known to such witness to be false.

Blacks law dictionary (1025 5ED 1979); see also United States v. Shonubi 988 F2D 84, 88 2nd Cir. 1993. For the purpose of justice enhancement under federal sentencing guidelines, perjury includes false testimony concerning material matters, given with willful intent to provide false testimony and not on an account of confusion, mistake or faulty memory.

Perjury is a statutory felony See Knix v. Whiteside, 475 US 157 1986

Rebecca Covell, an Attorney in the State of Arizona and an officer of the Court in the State of Arizona had a responsibility under the American Bar Association ethical rules for attorneys and under the rules of the Supreme Court State of Arizona Rule 42, Arizona Rules of Professional Conduct not to commit fraud in this civil case herein by knowingly, willfully and willingly gave false testimony concerning material matters given with the willful intent to provide false testimony at the Peoria Justice Court Summary Judgment hearing on June 20, 2002 in open court before Judge Lex Anderson and not on account of confusion, mistake or faulty memory. David Brnilovich,

Attorney and Defendant in this action was present in the courtroom at the entire hearing.

> The first element is that Rebecca Covell, an Officer of the Court in Arizona, with David Brnilovich, present, committed fraud on the legal process, because Ms. Covell had an alternative purpose by committing fraud by her willful acts of the judicial process, not proper in the regular conduct of the proceeding, and by Ms. Covell's Overt Acts under color of state law before Judge Anderson of the Peoria Justice Court, in Peoria, Arizona, violated Plaintiff's Civil Rights under the 14th Amendment of the United States Constitution, as Plaintiff has a vested property right in his licenses 28761 and 28762, issued by the Arizona State Department of Insurance, to settle automobile claims. Because Ms. Covell, in open court, stated that according to the statutes and laws in Arizona, the Plaintiff is not legally allowed to settle automobile claims she committed fraud, as there are no statutes or laws in Arizona that state a public adjuster cannot settle first and third party claims. The Plaintiff's due process and equal protection of the law were violated, as the Plaintiff was not afforded a fair trial as Plaintiff under his statutory license ARS 20-321 is permitted as a public adjuster to either investigate or negotiate or otherwise adjust insurance settlements and by the Overt Acts of Ms. Covell's fraud, a Summary Judgment Motion was granted against the Plaintiff for Consumer Fraud violating the Plaintiff's Constitutional Rights.

The Plaintiff attaches Appendix 1 Exhibit C1, Senate Bill 216 State of Arizona 45th Legislative Second Regular Session 2002, "Mr. Madakaza states the bill

clarifies that an adjuster either investigates or negotiates or otherwise adjusts insurance settlements." The Senate Bill was carried by role call vote of 6-0-0 and it was signed Nancy L. DeMichele, Committee Secretary.

The second element is that the Plaintiff's public adjuster licenses issued by the Arizona State Department of Insurance has been in good standing for over 10 years and these licenses are not a privilege, but a right, as shown in the following cases, as a property right that the Plaintiff is entitled to enjoy and earn a good living under the 14th Amendment to the Constitution.

The Plaintiff has a vested property interest in his public adjuster's licenses and being a public adjuster is a right and not a privilege as shown in the following cases, where injury has happened for which an injured party has a course of action because he has a vested property right that is guaranteed by due process because he has a state license.
LOTT v. HALEY 1949 LA 310 SO 2D 521

A state dental license has a property interest and is entitled to Due Process before the license
is taken away or impaired.
COMEAU v. Arizona State Board of Medical Examiners 116 Arizona 102,106,108,1993
P2D 1066, 1070

The practice of a profession is a right not just a privilege and before the State can control that right, it must afford Due Process of law for the person that has that state license.
Schwillerstrom v. State 180 Arizona 468, 885, P2D 156, 159 App 1994 citing application of Lavene 97 Arizona 880, 90-91 397 P2D205, 206, 207 1964

A professional license is a valuable property right reflected in a money effort and an opportunity
to be in business for yourself and a chance for the opportunity for employment given an
individual earning capacity which may not be revoked without due process of law and a
state medical license was found to be property and found to be a equitable distribution in the divorce.
O'Brien v. O'Brien 1985 66 NY 2D 576 498 NY S2D 243 NE2D 712

Where injury has happened for which an injured party has a course of action, and where such course of action is a vested property right which is protected by the guarantee of Due Process, 14th Amendment. The 14th Amendment undoubtedly intended that there shall be no deprivation of property, equal protection and security shall be given to all like circumstances, enjoyment, personal and Civil Rights and all persons should be entitled to pursue their happiness and enjoy their property
Barbier v. Connelly 113 U.S. 27, 28 LED 923 S. Ct. 357

The jurisdiction in this case also arises under 14th Amendment to the Constitution of the
United States:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of live, liberty, or property, without Due Process of law;nor deny to any person within its jurisdiction the equal protection of the laws.

The Overt Acts of Rebecca Covell in open court with David Brnilovich present before Judge Anderson, who never went to law school, of the Peoria Justice Court in Arizona violated Plaintiff's Civil Rights under the 14th Amendment to the Constitution, as Plaintiff's Due Process and equal protection of the law was violated by Rebecca Covell's perjury stating the law in Arizona is that the Plaintiff cannot settle automobile claims, as Plaintiff's licenses 28761 and 28762 are a right and not a privilege. The Plaintiff was deprived of a fair hearing and his due process was violated by the Overt Acts of Ms. Covell, smashing Plaintiff's property right under color of state law, as it can be clearly seen, Ms. Covell had an alternative purpose and committed willful acts of the judicial process, not proper in the regular conduct of the proceeding, thus Plaintiff's Constitutional Rights were violated, as Plaintiff did not get to enjoy his property right in this trial by not receiving a fair trial and losing on all 5 counts at the Summary Judgment hearing, violating his Constitutional Rights.

Hoffman v. Halden 268 F2D 280 CA 9 OR 1959 it states in 2 cases, one involving the criminal statute and one involving the civil statute, the court reached similar results which we can equate, namely that a specific intent to violate ones constitutional rights was required under the criminal statues and conduct which was purposefully discriminating, as to such rights are required under the civil statute.

Hillard v. Williams 540 F 2D 220 (6th Cir. 1976) United States Court of Appeals Sixth Circuit whether guilty or innocent, Mrs. Hilliard had a due process right to a fair trial. Defendant Williams withheld an F.B.I. report indicating that there was no blood on Mrs. Hilliard's jacket. Moreover, Williams failed to prevent or to correct

deceptive and misleading testimony given by Defendant Clark from which the jury could have concluded that the jacket was stained with the victim's blood. Further, it appears that Williams actually instructed Clark to testify at least evasively, if not falsely. We believe that by these acts and omissions, Defendant Williams deprived Mrs. Hilliard of her constitutional right to a fair trial.

The Defendant's in this case have violated Plaintiff's Civil Rights under Title 42 1983 as shown in these pleadings of the specific acts of their fraud, which "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or cause s to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The specific acts of Rebecca Covell, an Officer of the Court, by perpetrating an injustice by a provision of the Judicial Process was the accomplishment of her fraud as an Officer of the Court. The Plaintiff's Civil Rights by this act of fraud and violated Plaintiff's Constitutional rights. Title 28 U.S.C.A. § 1343 expressly grants jurisdiction to the Supreme Court of the United States in civil actions for violation of Civil Rights.

The civil "is a concerted action or a sort of civil partnership in commission of injury by where one may act for his partner and both may be bound as in this case David Brnilovich, an Officer of the Court was Rebecca Covell's Supervisor.

The section of a Civil Rights Act giving a civil action for the deprivation of any rights, privileges, or immunities

secured by the Constitution and laws of the United States is not limited only to due process violations as distinguished from denials of equal protection of laws. 42 U.S.C.A. § 1983; U.S.C.A. Const. Amend 14.

Rebecca Covell, as an Officer of the Court and David Brnilovich as an Officer of the Court, her Supervisor, and Jennings, Strouss and Salmon, the owner of the firm, have all violated the Constitutional Rights of the Plaintiff because of their fraud and the specific acts shown in these pleadings by their Overt Acts of committing fraud on the court and in the fact that the Plaintiff did not get a fair trial, as he lost of 5 Summary Judgment Motions and his Constitutional Rights were violated under 1983, 1343 and the 14th Amendment to the Constitution that his equal protection and due process of the law was violated because the Plaintiff was entitled to a fair trial under the laws of the Constitution of the United States.

The Plaintiff states his license is a valuable property right reflected in a money effort and an opportunity to be in business for himself and a chance for an opportunity given an individual earning capacity which may not be revoked under due process of law. The Defendant, Rebecca Covell by committing fraud and giving false testimony to the Justice Court by this Overt Act, violated Plaintiff's due process of law to a fair trial under color of state law and thus violating Plaintiff's Constitutional Rights. The Plaintiff has clearly shown that by the Overt Acts of this Defendant and other parties, there was a conspiracy which violated Plaintiff's Civil Rights under the 14th Amendment to the Constitution by taking away enjoyment of Plaintiff's property rights, his licenses 28761 & 28762 so the Plaintiff did not get a fair trial and Plaintiff also states under Title 1983 and 1985 the Defendant conspired so that the Plaintiff would not get a fair trial under color of state law and Plaintiff's Constitutional Rights were violated.

This case also represents other issues of equal protection and due process. A party who is represented by an attorney is not sanctioned for willfully failing to follow the Rules of Civil Procedure for over six months by failing to file a Disclosure Statement, yet a party no represented by a lawyer who made a good faith effort to follow the rules is given the ultimate sanction by being denied the fundamental right to have his case heard on the merits because he was a mere thirty days late following a confusing rule that he did not willfully fail to follow that and that did not prejudice the adverse party on the merits and such action should generally result upon showing prejudice the adverse party on the merits and such action should generally result upon showing prejudice to an adverse party: absent such prejudice, society's interest in adjudication appeal on the merits should govern there was no showing of prejudice by the adverse party.

The court routinely permits attorneys to correct technical errors of the rules but for people who represent themselves, the State Courts in Arizona held the Petitioner to the strict letter of the law, which is a violation of the Equal Protection of the Law under the United States Constitution.

Where adequate Notice of Appeal has been given, an opposing party, fairness demands that no mere technical error should prevent the Appellate Court from reaching the merits of the appeal. 17B A.R.S. Civil Appellate Rules Rule 8C Arizona

Arizona Courts dispose of cases on the merits when there are errors on procedure can be characterized as harmless and non-prejudicial to mislead the other party. Hanen 102 Z at 9, 423 P2D

Federal Due Process recognizes there is "a duty to insure that Pro Se Litigators do not lose their right to a hearing on their claim due to ignorance to technical requirements."
AHMED v. County of Orange 924 FLD 1962 C.A. 9 California 99

Federal Due Process requires that Pro Se Litigators be given a meaningful opportunity to be heard. Little v. Streater 42 US1 – 1981

Equal Protection of the Law may be implicated when different rules apply to Pro Se Litigators. HINES v. Kerner 404 US 519-1972

We have repeatedly emphasized that a Pro Se Litigant is entitled to certain procedural protections, James 269 F3D at 1126

Garaux 739 F2D at 439 – 40, the Protection of Pro Se Litigants rights is particularly important when highly technical requirements "might result in the loss of the opportunity to prosecute or defend the lawsuit on the merits."

243 F3D ABDELZHER excellence CA9 Wash. 2000. We accord Pro Se Litigants liberal treatment in asserting their claims especially with regard to formal requirements.
CLIM v. INS 224 F3D 929 9th CIR 2000

Rebecca Covell, an Attorney in the State of Arizona and an officer of the Court in the State of Arizona had a responsibility under the American Bar Association ethical rules for attorneys and under the rules of the Supreme Court State of Arizona Rule 42, Arizona Rules of Professional Conduct not to commit fraud in this civil case herein by knowingly, willfully and willingly gave false testimony

concerning material matters given with the willful intent to provide false testimony at the Peoria Justice Court Summary Judgment hearing on June 20, 2002 in open court before Judge Lex Anderson and not on account of confusion, mistake or faulty memory. David Brnilovich, Attorney and Defendant in this action was present in the courtroom at the entire hearing.

In conclusion, the Petitioner presented his Statement of Facts to this Supreme Court of the United States and has shown some of the specific acts that the Respondents have done in this case in violating the Petitioner's Civil Rights according to the Constitution of the United States, Petitioner has exhausted all his legal remedies with the Supreme Court in the State of Arizona which he has to be brought to the Supreme Court of the United States for his appeal to overturn what the Supreme Court in the State of Arizona decided and not accepted jurisdiction of the Petitioner's appeal from the Justice Court to the Arizona Supreme Court.

The jurisdiction in this case also rises under the 14th Amendment to the Constitution of the United States, which guarantees all citizens of the United States equal protection and due process of law to enjoy their life and property.

The Petitioner's Civil Rights have been violated by the following sites of various statutes and case law, which given this Supreme Court of the United States jurisdiction over this case as the Petitioner's Civil Rights have been violated by the State Courts, the Judges, the Defense Counsel and the Respondent.

The jurisdiction in this case also arises under Title 28 #1343 in that the District Court shall have jurisdiction of any civil action by law to be commenced by any person. The District Court will have original jurisdiction.

To recover damages for any injury to his person or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mention in Section 1985 of Title 42.

To recover damages from any person or to aid in presenting any wrongs mentioned in Section 1985 of Title 42, which he had knowledge about to occur and power to prevent.

To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom, or usage of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for the equal rights of citizens

or of all persons within the jurisdiction of the United States. To recover damages or to secure equal relief under any Act of Congress provided for the protection of Civil Rights, including the right to vote.

The jurisdiction in this case also arises under Title 42 US CA 1983 civil action of deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory subjects or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof, to the deprivation of any rights, privileges or unities secured by the Constitution and laws, shall be liable to the persons injured in any action of law, suit in equity, or other proper proceedings for redress.

II. THE ARIZONA SUPREME COURT HAS DECIDED IMPORTANT FEDERAL QUESTIONS THAT CONFLICTS WITH OTHER STATES

The Arizona Supreme Court has decided important Federal questions that have not been, but should be settled by this Court and has decided that question in a way that is inconsistent with other decidions of the Court.

Conclusion: For the foregoing resaons, the petitioner respectfully requests that this court grants the petition for writ of certiorari; and reverse the decision of the Arizona Supreme Court

Respectfully submitted,

Irwin Gary Roberts
5629 South Sailors Reef Road
Tempe, Arizona 85283
(480) 491-4020

APPENDIX A

Docket Number_____

In the Supreme Court of the United States

CV-03-0036-PR

Irwin Gary Roberts,
Petitioner,
v.
Patricia Jeanne Ard,
Respondent

Decisions of Arizona State Courts

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APPENDIX A
SUPREME COURT
STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON
PHOENIX ARIZONA 85007-3329
TELEPHONE: (602) 542-9396

May 15, 2003
RE: IRWIN ROBERTS v HON. MICHAEL JONES/ PATRICIA ARD
Arizona Supreme Court No. CV-03-0036-PR
Court of Appeals Division One No. 1 CA-SA 02-0331
Maricopa County Superior Court No. CV 02-017209

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 15, 2003, in regard to the above referenced case:

ORDERED: Accellerated Motion Petimiires [sic] Motion for Petition for Review Should be Ruled on at Once as Pelitoner [sic] Has Debters [sic] Hearing on April 24, 2003 and Seeks Relief in Federal Court if Petitorer [sic] Loses = DENIED.

FURTHER ORDERED: Petition for Review = DENIED.

A panel composed of Chief Justice Jones, Vice Chief Justice_McGregor and Justice Ryan participated in the determination of this matter.

Record returned to the Court of Appeals, Division One, Phoenix, this 15th day of May, 2003.

Noel K Dessaint, Clerk

TO:
Irwin Gary Roberts
David Brnilovich, Jennings Strouss & Salmon PLC, Arrowhead Office Rebecca L Covell, Jennings Strouss & Salmon PLC, Collier Building Hon Michael D Jones, Judge, Maricopa County Superior Court, Central Court Building
West Publishing Company
Lexis-Nexis
Philip G Urry, Clerk, Court of Appeals, Division One, Phoenix
kg

STATE OF ARIZONA

IN THE COURT OF APPEALS

DIVISION ONE

IRWIN GARY ROBERTS,

Petitioner

v.

THE HONORABLE MICHAEL JONES, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa

County

Respondent Judge,

PATRICIA ARD,

1-CA-SA 02-0331

DEPARTMENT B

MARICOPA

Superior Court
No. CV-02-017209

ORDER

The court has considered the Petition for Special Action filed by Petitioner Roberts.

In the exercise of its discretion, IT IS ORDERED the court declines to accept jurisdiction of the Petition.

DATED this 2nd day of January, 2003.

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

11/25/2002

HONORABLE P.
MICHAEL D. JONES

CLERK OF THE COURT
M. Espinoza Deputy
CV 2002-017209

FILED: 12/02/2002

IRWIN GARY ROBERTS

IRWIN GARY ROBERTS
5629 S SAILOR REEF RD
TEMPE AZ 85283

V.

PATRICIA ARD

DAVID BRNILOVICH

PEORIA JUSTICE COURT
7420 W CACTUS RD PEORIA
AZ 85381

MINUTE ENTRY

The Court has received and reviewed Defendant's Motion for Reconsideration. Good cause not appearing,

IT IS ORDERED denying same.

The foregoing instrument is a full, true and correct copy of the original on file in this office.
Attest August 11, 2003
MICHAEL K. KEANES, Clerk of the Superior Court of the State of Arizona, in and for the County of Maricopa
By L. Johnson Deputy

1 CA-SA 02-0331 January 2, 2003

A true copy of the foregoing order was mailed
January 2, 2003 to:

Mr. Irwin Gary Roberts
Propria Persona
5629 South Sailor's Reef Road
Tempe, AZ 85283
Petitioner

Mr. David Brnilovich
Jennings, Strouss & Salmon, P.L.C.
The Collier Center, 11th Fl
201 East Washington Street
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and

Ms. Rebecca L. Covell
Jennings, Strouss & Salmon, P.L.C.
The Collier Center, 11th Fl
201 East Washington Street
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Attorneys for Real Party in Interest

Honorable Michael D. Jones, Judge
MARICOPA COUNTY
SUPERIOR COURT
Central Court Building
201 West Jefferson Street
Phoenix, AZ 85003-2205
Respondent Judge
Glen D. Clark. Clerk
The foregoing instrument is a full, true
and correct copy of the original on file in this office.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/24/02
HONORABLE MICHAEL D. JONES

IRWIN GARY ROBERTS

v.

PATRICIA ARD

FILED
10/31/2002
CLERK OF THE COURT
FORM V000A
CV 2002-017209
P. M. Espinosa, Deputy
Filed:_____
IRWIN GARY ROBERTS
5629 S. SAILOR REEF RD
TEMPE AZ 85283

DAVID BRNILOVICH

PEORIA JUSTICE COURT
7420 W CACTUS RD
PEORIA AZ 85381
PEORIA JUSTICE COURT
REMAND DESK CV-CCC

MINUTE ENTRY

The Court has received and reviewed Appellee/Defendant Ard's Motion to Dismiss Appeal for Failure to File Appellant Memorandum, Appellant's Response and Supplement.

Good cause appearing.

It is ORDERED granting Appellee/Defendant's Motion to Dismiss Appeal.

IT IS FURTHER ORDERED remanding this matter back to the Peoria Justice Court for all further proceedings.

Docket Code 506

ATTEST 6/5/03 Phillip G. Urry, Clerk of Division One Court of Appeals, State of Arizona

David Brnilovich – 006308
Rebecca L. Covell – 021033
JENNINGS, STROUSS & SALMON, P.L.C.

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201 East Washington Street
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Attorneys for Defendant Patricia Ard

CV-2002-019209

**IN THE PEORIA JUSTICE COURT
IN THE STATE OF ARIZONA, COUNTY OF MARICOPA**

IRWIN GARY ROBERTS, dba ACCIDENT ASSISTENCE CENTER OF AZ, INC.,

Plaintiff,

vs.

PATRICIA ARD,

Defendant.

No. CV01-02761RA

JUDGMENT

A Motion for Summary Judgment having been filed in this matter by Defendant Patricia Ard, and the Court having heard oral argument by Plaintiff and counsel for Defendant, having considered the memoranda filed and the entire record in this proceeding, and as a result of this Court having found after due deliberation and consideration that there is no genuine issue as to any material fact, and that Defendant is entitled to judgment

as -a matter of law: ,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the Motion for Summary Judgment of Defendant Patricia Ard be and the same is hereby granted;
2. That Plaintiff have and recover nothing from Defendant Patricia Ard;
3. That Plaintiffs action be and the same is hereby dismissed as to Defendant Patricia Ard;
4. That Defendant Patricia Ard take judgment on her counterclaims against Plaintiff in the total sum of $9,999 as and for damages under the following: A.R.S. § 44-1521, *et seq.*, for consumer fraud, *McClinton v. Rice,* 76 Ariz. 358, 365, 265 P.2d 425, 429 (1953) for slander per *se,-National Union Indemnity Co. v.* ***Bruce*** *Bros.*, 44 Ariz. 454, 464, 38 P 2d 648, 652 (1934) for disgorgement of the funds in the amount of $2,006 currently being held by Plaintiff under the void contract, and for statutory damages under A.R.S. § 33-420.
5. That Defendant Patricia Ard be awarded $48.00 as and for her costs in this matter.
6. That Defendant Patricia Ard be awarded $7000.00 as and for attorneys' fees.
7. Total Judgment entered in favor of Patricia Ard and against Irwin Gary Roberts d/b/a/ Accident Assistance Center of AZ, Inc. is $17,047 together with interest thereon at the maximum legal rate, accruing from the date of Judgment until paid.

That this Judgment is entered pursuant to Rule 54(b) of the Arizona Rules of Civil Procedure, and the Clerk of the Court is hereby directed that said Judgment is entered forthwith, there being no just reason appearing for delay in entering this Judgment.

DATED: 8/12/02

Lex E. Anderson
Judge of the Peoria Justice Court

PEORIA JUSTICE COURT
7420 W. CACTUS ROAD, PEORIA, AZ 85381
(623) 979-3234
www.maricopa.gov/justicecourts
Case Number: CV01-02761RA

PLAINTIFF:
IRWIN GARY ROBERTS
5629 S. Sailor's Reef Rd
Tempe, AZ 85283
(480) 491-4020

DEFENDANT:
PATRICIA ARD

ATTORNEY:

ATTORNEY:
JENNINGS, STROUSS
& SALMON

THE COLLIER CENTER
11TH FLOOR
201 E. WASHINGTON ST.
PHOENIX, AZ 85004-2385
(602) 262-5911

RULING ON MOTION

The Plaintiff having filed a Motion:

FOR CORRECTING A CLERICAL ERROR IN A JUDGMENT
RULE 60A, 60C on this day: March 5, 2003
% The Plaintiff/Defendant not having responded;
% The Court after reviewing that which was submitted;
IT IS THEREFORE ORDERED Granting/Denying the Motion

Date:_____

_____
Judge

Copies mailed to above addresses
this date:

APPENDIX B

Docket Number_____

In the Supreme Court of the United States

Irwin Gary Roberts,
Petitioner,
v.
Patricia Jeanne Ard,
Respondent

Petition for Special Action

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IRWIN GARY ROBERTS,	1 CA-SA 02-0331
Pro Per,	MARICOPA COUNTY SUPERIOR COURT NO.
PETITIONER,	CIV 2002-017209
vs.	PETITION FOR SPECIAL ACTION
THE HONORABLE MICHAEL JONES, Judge of the Superior Court of the State of Arizona, in And for the County of Maricopa,	
RESPONDENT JUDGE,	
PATRICIA ARD,	
REAL PARTY IN INTEREST	

The petitioner, Irwin Gary Roberts, respectfully requests that this Court accept jurisdiction of this Special Action and reverse the Respondent Judge's ruling dismissing the Petitioner's appeal for failing to timely file his Appellant Memorandum. The minute entry dismissing the petitioner's appeal is attached as the first page of Appendix 1. The

reasons supporting this request are set forth in the following memorandum.

DATED this 18th day of December, 2002.

IRWIN GARY ROBERTS
Petitioner
Pro Per

MEMORANDUM OR POINTS AND AUTHORITIES

I. JURISDICTIONAL STATEMENT

The petitioner seeks special action relief from an order of the Superior Court dismissing his appeal from the Peoria Justice Court because the Appellant's memorandum was not timely filed even though the Petitioner made a good faith attempt to do so and there was no prejudice to the Appellee. This Court has jurisdiction in this matter under Article 6, Section 9 of the Arizona Constitution, A.R.S. Section 12-120 and Rule 3(c) of the Rules of Procedure for Special Actions.

II. ISSUE PRESENTED

Did the Respondent Judge abuse his descretion when he dismissed the Petitioner's appeal for the Appellant's failure to file his memorandum within thirty days as provided by the Rules of Civil Appellate Procedure even though there was no prejudice to the Appellee, the Superior Court was not divested of jurisdiction and the Appellant made a good faith effort to follow the rules of Appellate Procedure on Civil Appeals?

III. MATERIAL FACTS

The Peoria Justice Court granted a motion for summary judgement against the petitioner even though the petitioner files a timely response to the Real Party in Interest's motion for summary judgement which included affidavits raising genuine issues of fact on each issue for which

the Real Party in Interest never submitted any proof of damages for any of the six counts that she was awarded summary judgement on, and yet the justice court awarded her $9,999.00 - the jurisdictional limit. See Exhibit A, Appendix 1 attached hereto which shows that the petitioner raised appropriate issues of material facts on every issue for which the Real Party in Interest was granted summary judgement. See Exhibit B and B1, Appendix 1 for Real Party in Interest's affidavits that lack any evidence of damages. See Exhibit C, Appendix 1 that shows the justice court was informed of the law regarding summary judgments in the petitioner's motion for reconsideration. The petitioner timely appealed the Justice Court's ruling granting the motion for summary judgment to the Superior Court.

The petitioner consulted the Superior Court Rules as to how to proceed on his appeal. Rule 13 dealing with Appellate Memoranda states:

"In all appeals based on a stipulated record (emphasis added), the parties shall file memoranda to aid the Superior Court in determination of the appeal."

In the petitioner's case there was no stipulated record and therefore the petitioner thought that he was precluded from filing a memorandum in support of his appeal. The petitioner had previously set forth everything that is required by Rule 13 to be in the Appellant's Memorandum in his pleading entitled "Response to Reply in Support of Defendant's Application for Attorney's Fees" so that if the petitioner lost in Justice Court, the Superior Court on appeal would be informed of the facts of the case, each issue to be decided in appeal, the legal arguements supporting the petitioner's position on each issue and a conclusion. The Real Party in Interest

knew that the issues on appeal would be and what the petitioner's legal argument for each issue on appeal would be. See Exhibit B Appendix D attached hereto - Response to Reply in Support of Defendants Application for Attorney's Fees.

The Real Party in Interest in this matter, who was represented by counsel at trial, never filed a Disclosure Statement as required by Rule 26.1 even though the petitioner files two separate motions asking the Justice Court to require them to do so over a five month period of time. See Exhibits E and F, Appendix 1. Their excuse for not filing a disclosure statement was that they were working on a summary judgement motion for five months which is not a valid reason under Arizona law for not filing the mandatory disclosure statement.

For over six months the Real Party in Interest's counsel chose to ignore the mandatory filing requirements of Rule 26.1. Yet when the petitioner failed to file his Appellate Memorandum within thirty days, counsel for the Real Party in Interest filed a Motion to Dismiss the appeal, but failed to allege any prejudice to them as a result of the petitioner's failure to do so.

The Real Party in Interest's counsel also committed numerous acts of misrepresentation which the petitioner documented and asked the court of impose sanctions for, but these requests were completely ignored by the trial court. Specific examples of this deliberate misrepresentation were changing the style of the case to make the petitioner personally liable when in fact two separate legal entities were involved and no legal determination was ever made as to which of these parties should be liable for which claim; arguing that the petitioner committed the unauthorized practice of law when there is no unauthorized practice of law statute in Arizona; and deliberately misrepresenting the legal effect, status and date of the release of a lien filed by the petitioner. See Exhibits G, H, and ROL, Appendix 1, attached hereto.

IV. ARGUMENT

Rule 15(c) of the Civil Rules of Appellate Procedure in civil cases states:

"If an appellant does not timely file his memorandum, the court, upon motion, may dismiss his appeal."

This rule does not require the automatic dismissal of the Appellant's Appeal because an appellant memorandum is not filed within thirty days. There are legal criteria the court must adhere to in making this determination and the Respondent Judge did not follow those criteria in case.

The criteria is court must use in determining whether or not an appeal should be dismissed for violation of an appellate rule was clearly set forth in Performance Funding, LLC vs. Barcon Corporation, 197 Ariz. 286 (App. 2000). In this case the Court held that an appeal should not be dismissed for violation of an appellate rule unless two things are present: (1) the violation of the rule affects the jurisdiction of the court hearing the appeal and (2) the Appellee can demonstrate that he was prejudiced because he was not informed of the issues on appeal.

The decision in Performance Funding is consistent with the decision of the Arizona Supreme Court in Hill vs. The City of Phoenix, 193 Ariz. 299 (1999) in which the Supreme Court held (1) That where the appellate court has general subject matter jurisdiction as well as personal jurisdiction over the parties, the court should strive to resolve an appeal on the merits; and (2) An appellant who fails to follow appellate procedure does so at the risk of losing his right to judicial review on the merit, and such sanction should generally result upon a showing of prejudice to an adverse party; absent such prejudice, society's interests in adjudicating appeals on the merits should govern.

The federal court have also held that cases should be decided on the merits where non-layers are representing themselves and should not be dismissed for technical violations of rules of procedure where no prejudice can be shown by the other party. Pro se litigants must be given a meaningful opportunity to be heard. Faretta v. California, 422 U.S. 806 (1975). If the pleadings of a pro se litigant can reasonable be read to state a valid claim, that claim must be heard on the merits despite the absence of legal citation or technical failing. The pleadings of pro se litigants are to be liberally construed. Hall v. Bellmom, 935 F2D 1106 (1991). For a court to do otherwise is to deny a pro se litigant equal protection and due process under the law.

In this case, neither of the two conditions that must be shown under Arizona case law to dismiss the petitioner's appeal were present. The Superior Court clearly had jurisdiction to hear this appeal and the Real Party in Interest was unable to show any prejudice by the petitioner's failure to timely file his Appellate Memorandum within thirty days. Petitioner made a good faith attempt to follow the rules of Appellate Procedure in Civil Appeals.

Rule 16 of the Civil Rules of Appellate Procedure permit the appellate court to extend the period of time for a pro se litigant to file an appellate memorandum and to not conform to the formal procedural requirements of the appellate rules "... to unsure that a fair and just determination of the appeal on its merits can be made." This is all the petitioner is asking for in this case; that his case can be heard on the merits as die process and the case law require.

This case also presents issues of equal protection and due process. A party who is represented by an attorney is not sanctioned for wilfully failing to follow the rules of Civil Procedure for over six

months by failing to file a disclosure statement, yet, a party not represented by a lawyer who made a good faith effort to follow the rules is given the ultimate sanction by being denied the fundamental right to have his case heard on the merits because he was a mere thirty days late in following a confusing rule that he did not willfully fail to follow and that did not prejudice the adverse party.

It is fair to permit lawyers who represent the Real Party in Interest to totally and willfully disregard the rule on disclosure for over six months that prejudiced the petitioner in filing a response to their summary judgement, but then impose the ultimate sanction against the petitioner at the request of those same lawyers because he was thirty days late in filing a memorandum that he did not know he could file and that caused no prejudice to the adverse party? If the law is going to be applied equally to all parties regarding adherence to the rules, then the petitioner's thirty days late filing of his appellate memorandum should not be treated any differently than the adverse parties failure to file a disclosure statement for six months. No sanctions were imposed on the adverse party's violation of the rules of the procedure by over six months, therefore no sanctions should have been imposed on the petitioner for being only thirty days late. The adverse party knew what the rule was and chose to ignore it; the petitioner did not know what the rule was, but tried to figure it out and tried to comply with it.

When the Real Party in Interest failed to file a disclosure statement as required by Rule 26.1, the petitioner was prejudiced by that willful rule violation. The petitioner did not know what the issues were, what the legal theories and defenses were going to be, what evidence the adverse party was going to use or who their witnesses were going to be. When the petitioner received the motion for summary judgement, he found out for the first time many of the things that should have been disclosed six months earlier in the disclosure

statement. In order to have time to properly respond to all these new surprises contained in the motion for summary judgement, the petitioner requested additional time to respond to the motion for summary judgment. He was denied an extension of time to respond despite the law clearly stating that he should have been granted that extension. See Exhibit I, Appendix 1, attached hereto.

V. CONCLUSION

All the petitioner ever wanted in this case was to have his fundamental right to have his case heard on the merits. He was wrongfully denied that right in the justice court when a motion for summary judgment was granted against him despite the fact that he raised genuine issues of fact supported by affidavits on each issue. There was also no evidence of proof submitted to support the award of damages against him. Additionally there was no differentiation made of who the damages should have been assessed even though there were two separate counter-defendants and there was no vicarious liability alleged or proved to link the same damages to both defendants. The petitioner filed a motion for reconsideration pointing out the errors of the justice court in granting the motion for summary judgement, but that motion, like all the other petitioner's motions, was denied by the justice court.

When the petitioner appealed that erroneous decision, he was again wrongfully denied his right to have his case heard on the merits because his appellate memorandum that he initially thought he did not have a right to file was thirty days late. No prejudice was shown by the Appellee because the Appellant was late in filing his memorandum. The law requires that a case be heard on appeal on the merits unless the appellate courts finds that there is both a lack of jurisdiction to hear the appeal and prejudice to the adverse party. Neither of these two requirements is present in this case. Therefore, the petitioner respectfully requests that this Court accept jurisdiction of the special action and reverse the ruling of the Respondent Judge that dismissed the petitioner's appeal so that this matter can finally be heard on the merits.

CERTIFICATE OF COMPLIANCE

Petitioner certifies that the forgoing Petition For Special Action has been prepared in double-speced 14-point Times New Roman font, a proportional roman typeface, and that the Petition contains 2,299 words per the word count function of the Work Perfect program used to prepared this document.

Respectfully submitted this 18th day of December, 2002.

Irwin Gary Roberts
IRWIN GARY ROBERTS
Petitioner

CERTIFICATE OF SERVICE

I hereby certify the original and six copies of the Special Action were hand delivered to the Court of Appeals in Phoenix, Arizona.

I hereby certify that a true copy hereof was hand delivered to Judge Michael D. Jones, Respondent Judge, and the Clerk of the Superior Court, 101 West Jefferson, Phoenix, Arizona 85003, on December 18, 2002.

I hereby certify that a true copy was mailed to David Brnilovich and Rebecca L. Covell Attorneys, Collier Center 11th Floor, 201 East Washington Street, Phoenix, AZ 85004-2385 on December 18, 2002.

Respectfully submitted December 18, 2002.

Irwin Gary Roberts
IRWIN GARY ROBERTS
Petitioner

APPENDIX C

Docket Number_____

In the Supreme Court of the United States

Irwin Gary Roberts,
Petitioner,
v.
Patricia Jeanne Ard,
Respondent

Petition for Review

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Irwin Gary Roberts
5629 S. Sailor's Reef Rd.
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ARIZONA SUPREME COURT
STATE OF ARIZONA

Irwin Gary Roberts, Pro Per,	ICA-SA 02-0331 ICA-SA CV-03-0036-PR MARICOPA COUNTY SUPERIOR COURT NO.
PETITIONER,	CV 2002-017209
vs.	PETITION FOR REVIEW

THE HONORABLE MICHAEL JONES, Judge of the Superior Court of the State of Arizona, in And for the County of Maricopa,

RESPONDENT JUDGE,

PATRICIA ARD,

REAL PARTY IN INTEREST

The petitioner, Irwin Gary Roberts, respectfully requests that this Supreme Court accept jurisdiction of this PETITION FOR REVIEW and reverse the Respondent Judge's ruling dismissing Petitioner's appeal and reverse The Court of Appeals for not accepting jurisdiction. A MINUTE ENTRY from the Court of Appeals in not accepting jurisdiction is attached to this pleading as Exhibit CA. The reasons supporting this request are set forth

in the following memorandum.

DATED this 31st day of January, 2003.

Irwin Gary Roberts
IRWIN GARY ROBERTS
Petitioner
Pro Per

MEMORANDUM OR POINTS AND AUTHORITIES

I. JURISDICTIONAL STATEMENT

The petitioner states 23.8 Appeals from The SUPERIOR COURT REVIEW, JUSTICE COURT CIVIL APPEALS with one exception there are no appeals of right behind SUPERIOR COURT REViEW. HABERKON V. SEARS ROEBUCK and CO. Supra; Scrap-CIV 20 (B). Indeed a case which originates in Justice Court and is subsequently appealed to The Superior Court is not "brought into Superior Court from any other court" so as to permit appeal to the Court of Appeals pursuant to ARS 12-2101B Sanders V. Moore 117 Arz. App 63, 495 P2D 503(1972); Morgan V. Continental Mortgage Investors 6 Arz. App 56, 891 P2D.

Even though no further appeal is availabie it may nonetheless be possible to obtain Special Action Review of The Superior Court determination 12-120, 21 AC4, see Civil Appeals 3.21, 8 Appellants Court Special Actions 7.3.2.

A 1990 amendment AR12-120, 21A 4 permits the Court of Appeals to hear and determine petitions for special actions brought pursuant to the Rules of Procedure For Special Actions, without regard to Appellate Jurisdiction.

State Ex Rel McDougal V. Superior Court (Klemencic) 190 Arz. 474, 826 P2D 337 App 1991, State Ex Rel McDougal V.

Albrecht 168 Arz. 128 811 P2D, 791 State V. Aguilar, 170 Arz. 292, 823, P2D 1300 App 1991, Civil Appeals 3.2.1.1. Appellate Court Special Actions 7.3.2.
Petitioner also attaches Superior Court Minute Entry to Appeal, if this Court does not accept jurisdiction, it is better to be safe than sorry Exhibit SC.

II. ISSUE PRESENTED

Did the respondent Judge and The Court of Appeals abuse their discretion when they dismissed the Petitioner's Special Action because of a technical error see Appendix D, Exhibit B (titled, Response to Reply in Support of Defendant's Application for Attorney's Fees) which clarified to the court all the issues that are needed to be addressed in the Special Action and the legal basis for each action there was no surprise to the Appellate.
Petitioner also relied on Arizona Civil Trial Practice Second Edition authored by Daniel J. Mcaliffe and Shirley J. Wahl Section 33.12. There was no stipulated record and the petitioner believed the Appeal would proceed on the record transmitted from the Justice Court to the Superior Court. The petitioner has filed every pleading from the Small Claims Court to the Supreme Court on time and made every effort to follow The Rules of Appellant Procedure and has acted in good faith.
The petitioner also consulted the Superior Court rules as to how to proceed on his appeal. Rule 13 dealing with Appellate Memorandum states:
"In all appeals based in a **stipulated record** (emphasis added), the parties shall file memorandum to aid the Superior Court in determination of the appeal."
In the petitioner's case, there was no stipulated record and therefore the petitioner thought that he was precluded from filing a memorandum in support of his appeal. The petitioner had previously set forth everything that is required by Rule 13 to be in the

Appellant's Memorandum in his pleading titled "Response to Reply in Support of Defendant's Application for Attorney's Fees", Appendix D, Exhibit B, so that if the petitioner lost in Justice Court, the Superior Court on appeal would be informed of the facts of the case, each issue to be decided on appeal, the legal arguments supporting the Petitioner's position on each issue and a conclusion, The Real Party in Interest knew what the issues on appeal would be and what the petitioner's legal argument for each issue on appeal would be. See Appendix 1 (Plaintiff's/Counter Defendant's Answer to Defendant's Motion For Summary Judgement) Exhibit A1 (Affidavit of Irwin Gary Roberts in Opposition to Motion for Summary Judgment), Exhibit D (Affidavit of Michael Wilenchik), Exhibit D, Appendix 1, Plaintiff's Motion for Reconsideration) and Appendix D, Exhibit B (RESPONSE TO REPLY IN SUPPORT OF DEFENDANT'S APPLICATION FOR ATTORNEY'S FEES).

III. MATERIAL FACTS

The Peoria Justice Court granted a motion for summary judgment against the Petitioner even though the Petitioner filed a timely response to the Real Party in Interest's motion for summary judgment which included affidavits raising genuine issues of fact on each issue for which the Real Party in Interest was granted summary judgment. The Real Party in Interest never submitted any proof of damages for any of the six counts that she was awarded summary judgment on, and yet the Justice Court awarded her $9,999.00 the jurisdictional limit. See Exhibit A and D, Appendix 1 which shows that the Petitioner raised appropriate issues of material facts on every issue for which the Real Party in Interest was granted summery judgment. See Exhibit B Affidavit of Patricia Ard) and Exhibit B1 (affidavit of George Klidas) in Appendix 1. Real Party in Interest affidavits that lack any evidence of damages. See Exhibit C Appendix 1 that show the

Justice Court was informed of the law regarding summary judgements in the Petitioner's motion for reconsideration. The Petitioner timely appealed the Justice Court's ruling granting the motion for summary judgment to the Superior Court. The Real Party in Interest in this matter, who was represented by counsel at trial, never filed a Disclosure Statement as required by Rule 26.1 even though the petitioner filed two motions asking the Justice court to require them to do so over a five month period of time. See Exhibit E and F, Appendix 1. Their excuse for not filing a Disclosure Statement was that they were working on a summary judgement motion for five months which is not a valid reason under Arizona law for not filing the mandatory Disclosure Statement. For over six months the Real Party in Interest's counsel chose to ignore the mandatory filing requirements of Rule 26.1. Yet when the petitioner failed to file his Appellate Memorandum within thirty days, counsel for the Real Party in Interest filed a Motion to Dismiss the appeal, but failed to allege any prejudice to them as a result of the petitioner's failure to do so.

The Real Party in Interest's counsel also committed numerous acts of misrepresentation which the petitioner documented and asked the court to impose sanctions for, but these requests were completely ignored by the trial court. Specific examples of this deliberate misrepresentation were changing the style of the case to make the petitioner personally liable when in fact two separate legal entities were involved and no legal determination was ever made as to which of these parties should be liable for which claim and also caused the case in the Justice Court to be transferred to the Superior Court as the amount exceeded $10,000; Defense Counsel again on January 16th, 2002 changed the heading before Judge Woodburn CIV TJ 202-005374, see Appendix Q Exhibit R and Q. Defense Counsel corrected the heading before the Respondent Judge Jones see Appendix 1, Exhibit W and X. Petitioners heading on Exhibit Z, Appendix Q is the correct

heading. Defense Counsel changed the heading to Irwin Gary Roberts dba Accident Assistance Centers of Arizona Inc. This was done in bad faith and subject to Rule 11 Sanctions, as fraud was perpetrated on the court.
Defense Counsel deliberately misrepresented the legal effects, status and date of release of a lien filed by the petitioner where a Summary Judgement was ruled against this petitioner on this issue. The petitioner filed and removed the lien in nine days where the law stated it had to be removed in twenty. The Justice Court refused to overturn his Summary Judgement Ruling, abused his discretion and acted in an arbitrary and capricious manner. See Appendix 1, Exhibit ROL, RELEASE OF CERTIFIED LIEN, Appendix 1, Exhibit SJH, Judge Anderson transcript, page 23, line 15-20 and Appendix 1, Exhibit O, the time sheet of attorney's showed no certified receipt received.

IV. ARGUMENT

Rule 15C of the Civil Rules of Appellate Procedure in civil cases states: "If an appellant does not timely file his memorandum, the court, upon motion, may dismiss his appeal." This rule does not require the automatic dismissal of the Appellant's Appeal because an Appellant Memorandum is not filed within thirty days. There are legal criteria the courts must adhere to in making this determination and the Respondent Judge and Court of Appeals did not follow those criteria in this case. The criteria a court must use in determining whether or not an appeal should be dismissed for violation of an appellate rule was clearly set forth in Performance Funding, LLV Barcon Corporation, 197 Ariz. 86 (App.2000). In this case the court held that an appeal should not be dismissed for violation of an appellate rule unless two things are present: (1) the violation of a rule affects the jurisdiction of the court hearing the appeal, and (2) the Appellee can demonstrate that he was prejudiced because he was not informed of the issues on appeal. In

this case, Appeal and Error 775, ON APPEAL, COURTS STRIVE TO DISPOSE OF CASES ON THEIR MERITS RATHER THAN ON HARMLESS TECHNICAL ERROR. The decision in Performance Funding is consistent with the decision of the Arizona Supreme Court in Hill v. the City of Phoenix, 193 Ariz. 299 (1999) in which the Supreme Court held (1) that where the appellate court has general subject matter jurisdiction as well as personal jurisdiction over the parties, the court should strive to resolve an appeal on the merits; and (2) an appellant who fails to follow appellate procedure does so at the risk of losing his right to judicial review on the merit, and such sanction should generally result upon showing of prejudice to an adverse party; absent such prejudice, society's interests in adjudicating appeals on the merits should govern.

3. **Appeal and Error 422**, where adequate notice of appeal has been given an opposing party, fairness demands that no mere technical error should prevent the appellate court from reaching the merits of the appeal. 17B A.R.S. Civil Appellate Proc. Rules, Rule 8C.

Arizona Courts recognize the Rules of Civil Procedure and dispose of cases on the merits where there are errors procedure can be characterized as harmless and non-prejudicial to mislead the other party. Hanen 102 Arz. at 9, 423, P2D.

Petitioner states see Appendix D, Exhibit A, where it states APPELLANT'S APPEAL MEMORANDUM TO REPLACE THE PREVIOUS PLEADING CAPTIONED ERRONEOUSLY AS RESPONSE TO REPLY IN SUPPORT OF DEFENDANT'S APPLICATION FOR ATTORNEY'S FEES, IF THIS EXHIBIT A WAS PLACED AS THE COVER SHEET OVER EXHIBIT B IN APPENDIX D RESPONSE TO

REPLY IN SUPPORT OF DEFENDANT'S APPLICATION FOR ATTORNEY'S FEES (assigned to Lex E. Anderson), than the memorandum would be complete, the technical error would be correct as the issues that are needed to be addressed in the Appeal Memorandum. Therefore the Hill V. City of Phoenix, which was ruled on by this Supreme Court State of Arizona is the law and the petitioner's case should reverse the Ruling of the Court of Appeals and the Respondent Judge (JUDICIAL NOTICE) Of (THE HILL CASE) SHOULD BE TAKEN BY THIS SUPREME COURT. The Superior Court and the Court of Appeals clearly had jurisdiction to hear this appeal as the Real Party in Interest was unable to show any prejudice because of the technical error or petitioner's timely failure to file his Appellant Memorandum within thirty days. Petitioner made a good faith attempt to follow the Rules of Appellate Procedure in Civil Appeals. Since the inception of this case this is the first time a technical error has occurred or filing a motion that was not timely. As neither of the two conditions that must be shown under Arizona case law to dismiss the petitioner's appeal were present. The Superior Court and Court of Appeals clearly had jurisdiction to hear this appeal and the Real Party in Interest was unable to show any prejudice by the petitioner's failure to timely file his Appellate Memorandum and to accept the mere technical error and to accept jurisdiction. Petitioner made a good faith attempt to follow the rules of Appellate Procedure in Civil Appeals.

Federal Due Process requires that Pro Se litigants must be given a meaningful opportunity to be heard. Little V. Streater 452 US 1 (1981). Equal protection of the laws may be implicated when different rules apply to Pro Se litigants. Taissan V. People 731 P2D 677. The pleadings of Pro Se are to be construed liberally, Schwartz, cited pursuant to 10th Cir. R. 363 citing Haines V.

Kerner 404 US 579 (1972). If we can reasonably read the pleadings to state a valid claim we will do so despite the absence of citation of legal authority or other technical errors or findings. Hall V. Bellmon 935 F2D 1106 (1991).

Rule 16 of the Civil Rules of Appellate Procedure permit the Appellate Court to extend the period of time for a Pro Se litigant to file an Appellate Memorandum and to not conform to the formal procedural requirements of the Appellate Rules" . . . insure that a fair and just determination of the Appeal on it's merits can be made." This is all the petitioner is asking for in this case; that his case be heard on the merits as due process and the case law require.

This case also presents issues of equal protection and due process. A party who is represented by an attorney is not sanctioned for willfully failing to follow the rules of Civil Procedure for over six months by failing to file a disclosure statement, yet, a party not represented by a lawyer who made a good faith effort to follow the rules is given the ultimate sanction by being denied the fundamental right to have his case heard on the merits because he was a mere thirty days late in following a confusing rule that he did not willfully fail to follow and that did not prejudice the adverse party.

It is fair to permit lawyers who represent the Real Party in Interest to totally and willfully disregard the rule on disclosure for over six months that prejudiced the petitioner in filing a response to their summary judgment, but then imposed the ultimate sanction against the petitioner at the request of those same lawyers because he was thirty days late in filing a memorandum that he did not know he could file, and which also had a mere technical error caused no prejudice to the adverse party. If the law is going to be applied equally to all parties regarding adherence to rules, than the

petitioner's thirty days late filing of his Appellate Memorandum or having a mere technical error should not be treated any differently than the adverse party's failure to file a disclosure statement for six months. No sanctions were imposed on the adverse party's violation of the Rules Of Procedure by over six months, therefore no sanctions should have been imposed on the petitioner for being only thirty days late. The adverse party knew what the rule was and chose to ignore it, the petitioner did not know that the rule was, but tried to figure it out and tried to comply with it. When the Real Party in Interest failed to file a disclosure statement as required by Rule 26.1., the petitioner was prejudiced by that willful rule violation. The petitioner did not know what the issues were, what the legal theories and defenses were going to be. When the petitioner received the motion for summary judgement, he found out for the first time many of the things that should have been disclosed six months earlier in the disclosure statement. In order to have time to properly respond to all these new surprises contained in the disclosure statement, the petitioner requested additional time to respond to the motion for summary judgement. He was denied an extension of time to respond despite the law clearly stating that he should have been granted that extension. See Exhibit 1, Appendix 1, attached hereto (PLAINTIFF'S RESPONSE TO DEFENDANT MOTION FOR ORAL ARGUMENTS FOR SUMMARY JUDGMENT ON JUNE 20, 2002 SHOULD BE DENIED AND CONTINUED AT A LATER DATE).

V. CONCLUSION

Petitioner submits part of the transcript from the Summary Judgment hearing before Judge Anderson. See Appendix Q, Exhibit SJH, see page 1 line 508, page 5 line 9-25, page 6 line 1-13, page 7 line 4-8, 12-14, page 15 line 15-23, page 16 line 1-14, page 7 line 15-23, page 8 line 4-12, page 15 line 8-11, page 16 line 5-10, page 23 line 15-20. The above references refer to

change of heading, disclosure, offer of settlement and release of lien which proves misconduct by attorneys and abuse of discretion by the Justice Court. There is a code of conduct for attorneys and for the Judiciary, Due Process requires that every litigant have a fair hearing before an impartial Tribunal. The Courts in this state from the Small Claims to the Court of Appeals have abused their discretion, acted in an arbitrary and capricious manner and violated the Due Process and Equal Protection of the law of the petitioner because every motion, response and reply has been denied to him and they were not frivolous. The attorneys for the Defense have deliberately violated the Rules of the Court because of their misconduct, fraud, Due Process, and Equal Protection of the petitioner has been violated. The petitioner has documentary evidence that the Bar Association is the driving force behind the The Respondent Ard and her family, who on information and belief are committing welfare and insurance fraud. What ethical lawyer would spend $26,000 on a $2,006 case which was in The Small Claims Court? See Appendix 1, Exhibit J, letter of offer December 7th, 2001. Defense Attorneys would not give the Respondent Ard the offer. The petitioner states since the law is on his side, he had been shafted because he is a Public Adjuster for eleven years and has been legally exercising his right granted to him by ARS 20-281 by the Legislator in the State of Arizona. The petitioner has documentary evidence that the Bar Association is the driving force behind this plot to make him the scapegoat by stating that a Public Adjuster or individual can't be in the unauthorized practice of law in Arizona as the legislature repealed the statute in 1984. See Exhibit APL, Appendix 1, Van O'Steen. All the petitioner ever wanted in this case was to be heard on the merits. He was wrongfully denied that right in the Justice Court when a motion for summary judgement was granted against him despite the fact that he raised genuine issues of fact supported by affidavits on each issue. There was no evidence of proof submitted to support the award of damages against him. There was no

differentiation made of who the damages should have been assessed even though there were two separate counter defendants and there was no vicarious liability alleged or proved to link the same damages to both defendants. The petitioner filed a motion for reconsideration pointing out the errors of the Justice Court in granting the motion for summary judgement, but that motion, like all the other petitioner's motions, was denied by the Justice Court. When the petitioner appealed that erroneous decision, he was again wrongfully denied his right to have his case heard on the merits because his Appellate Memorandum that he initially thought he did not have a right to file was thirty days late and there was a mere technical error. No prejudice was shown by the Appellee because the Appellant was late in filing his memorandum. The law requires that a case be heard on appeal on the merits unless the Appellate Courts finds that there is both a lack of jurisdiction to hear the case and prejudice to the adverse party. Neither of these two requirements is present in this case. Therefore, the Petitioner respectfully request that this Court accept jurisdiction of this Petition for Review and reverse the ruling of the Respondent Judge and the Court of Appeals that dismissed the petitioner's appeal so that this matter can finally be heard on the merits.

EXHIBIT CA - MINUTE ENTRY

COURT OF APPEALS

DECLINES JURISDICTION!

EXHIBIT CA

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IRWIN GARY ROBERTS,	1 CA-SA 02-0331
	)Department B
Petitioner,	)
	)Maricopa Cty
v.	)Superior Court
	)No. CV 02-
THE HONORABLE MICHAEL JONES,	)017209
Judge of the SUPERIOR COURT OF	)
THE STATE OF ARIZONA, in and	)ORDER
for the County of Maricopa,	)
	)
Respondent Judge,	)
	)
PATRICIA ARD,	)
	)
Real Party in Interest.	)
	)

The court has considered the Petition for Special Action filed by petitioner Roberts.

In the exercise of its descretion, IT IS ORDERED the court declines to accept jurisdiction of the Petition.

DATED this 2nd day of January, 2003.

James B. Sult, Presiding Judge

1 CA-SA 02-0331

January 2, 2003

MARICOPA COUNTY
Superior Court
CV 02-017209

A true copy of the foregoing
order was mailed
January 2, 2003 to:

Mr. Irwin Gary Roberts
Propria Persona
5629 South Sailor's Reef Road
Tempe, AZ 85283
Petitioner

Mr. David Brnilovich
Jennings, Strouss & Salmon, P.L.C.
The Collier Center, 11th Fl
201 East Washington Street
Phoenix, AZ 85004-2385
and

Ms. Rebecca L. Covell
Jennings, Strouss & Salmon, P.L.C.
The Collier Center, 11th Fl
201 East Washington Street
Phoenix, AZ 85004-2385
Attorneys for Real Party in Interest

Honorable Michael D. Jones, Judge
MARICOPA COUNTY SUPERIOR COURT
Central Court Building
201 West Jefferson Street
Phoenix, AZ 85003-2205
Respondent Judge

Glen D Clark, Clerk
By

_____
Deputy Clerk

EXHIBIT SC
MINUTE ENTRY
NOTICE OF APPEAL TO
THE COURT OF APPEALS

EXHIBIT SC
SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-017209 01-01-2003

HONORABLE MICHAEL D. JONES

FILED: 01/07/2003

IRWIN GARY ROBERTS

IRWIN GARY ROBERTS
5629 S. SAILOR REEF RD.
TEMPE AZ 85283

v.

PATRICIA ARD

DAVID BRNILOVICH

PEORIA JUSTICE COURT

MINUTE ENTRY

This Court has received and reviewed Appellant's Motion to Dismiss Notice of Appeal.

IT IS ORDERED granting Appellant's Notice of Appeal to the Court of Appeals.

APPENDIX EXHIBIT D AND APPENDIX 1 IS HAND DELIVERED TO THE CLERK OF THE COURT OF APPEALS, JUDGE MICHAEL JONES. OF THE SUPERIOR COURT AND TO REBECCA COVELL AND DAVID BRNILOVICH, ATTORNEYS.

Respectfully Submitted
this day of January 31, 2003

_____
Irwin Gary Roberts
Dated January 31, 2003

Petition For Review was delivered to the Court of Appeals for The Supreme Court State of Arizona at 1501 West Washington, Phoenix, Arizona on January 31, 2003

Petition for Review was hand delivered
to the Respondent Judge Michael Jones Superior Court
201 West Jefferson Phoenix, AZ 85007
on January 31, 2003

Petition for Review was
Hand Delivered to
Rebecca Covell and Brnilovich at
Jennings, Strouss and Salmon
201 West Washington
Phoenix, AZ on January 31, 2003

Irwin Gary Roberts
Dated January 31, 2003